IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.02.2005

CORAM

THE HON'BLE MR.MARKANDEY KATJU, CHIEF JUSTICE
and
THE HON'BLE MR.JUSTICE D.MURUGESAN

Writ Appeal Nos.1663 and 1664 of 2003

The Management of Thiruvalluvar
Transport Corporation,
Rep. by its Managing Director,
Pallavan Salai, Chennai - 2. ..Appellant in both the appeals/1st Respondent in WP.1999/96 / Petitioner in WP.2314/96.

Vs.

S.Anthonysamy ..1st respondent in W.A.1663/2003
& 2nd respondent in W.A.1664/2003
Petitioner in WP.1999/96 /
2nd Respondent in WP.2314/96.

The Presiding Officer,
Labour Court,
Tirunelveli. ..2nd respondent in W.A.1663/2003
& 1st respondent in W.A.1664/2003
2nd Respondent in WP.1999/96 /
1st Respondent in WP.2314/96.

PRAYER: Writ appeals filed under Clause 15 of the Letters Patent Against the order dated 19.04.2002 passed in W.P.Nos. 1999 and 2314 of 1996 on the file of this Court.

For Appellant :: Mr.S.Kandasamy
For Respondent :: Mr.D.Saravanan
for 1st Respondent in WA.1663/03
and for 2nd Respondent in
WA.1664/03.

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J U D G M E N T

(The Judgment of the Court was delivered by The Hon'ble The Chief Justice)

These writ appeals have been filed against the impugned judgment of the learned single Judge dated 19.04.2002.

2. We have heard learned counsel for the parties and have perused the impugned judgment and also the record including the award of the Labour Court.

3. The respondent was a driver in a bus of the appellant. When he was driving the bus there was an accident on 28.11.1985 and in that accident eight passengers including the van driver were killed and five were injured. A domestic enquiry was held in which the workman was given an opportunity of hearing and thereafter he was found guilty. He was given a second show cause notice and thereafter he was dismissed on 13.09.1988.

4. He raised an industrial dispute and the matter was referred to the Labour Court, which passed its award on 1.7.1994.

5. The Labour Court in the relevant portion of its award stated:-

> "Today an endorsement was made on behalf of the petitioner to the effect that the petitioner is not assailing the enquiry. From a perusal of the enquiry proceedings coupled with the endorsement made on behalf of the petitioner, it is clear that the accident took place on account of his negligence. But, the further question is whether that occurrence of the accident will warrant dismissal of the petitioner. There are several reasons for the occurrence of an accident. The fact that the petitioner was not found guilty by the Magistrate goes a long way to show that the petitioner/driver is not totally responsible for the occurrence. I feel that it is a fit case for invoking Section 11-A of the Industrial Disputes Act. Accordingly, I feel that the interest of justice will be met if the petitioner is taken back as a fresh candidate without backwages and without continuity of service by the respondent. Accordingly, the points are answered."

6. A perusal of the above passage shows that the workman had himself admitted that the enquiry was fair and proper because he did not assail it. The Labour Court has recorded a finding of fact that the accident took place on account of the negligence of the

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workman. This being a finding of fact could not have been interfered with in writ jurisdiction.

7. However, it appears that the Labour Court has interfered with the dismissal order because the workman concerned was acquitted in the criminal case on the same charges.

8. It is well settled that on the same charges when there is a criminal proceeding as well as a domestic enquiry, merely because the workman is found innocent in the criminal case, it does not mean that he cannot be found guilty in the departmental/domestic enquiry vide Thenmozhi V. The Chairman & Managing Director, Neyveli Lignite Corporation in W.A.Nos.202 and 203 of 2005 dated 08.02.2005.

9. In the aforesaid Division Bench decision reliance had been placed on the Supreme Court decisions in Allahabad District Co-operative Bank Ltd., Vs. Vidhya Varidh Mishra, (2004) 6 SCC 482 and Secretary, Ministry of Home Affairs and Another V. Tahir Ali Khan Tyagi, JT 2002 (Supp.1) SC 520.

10. In paragraph 12 of the decision in Allahabad District Co-op. Bank Ltd., Vs. Vidhya Varidh Mishra (supra) the Supreme Court observed:-

> "Mr.Rao submitted that the respondent had been exonerated by the criminal court. He submitted that the termination was only on the basis of his conviction. He submitted that as his conviction is set aside, the Courts below were right in reinstating the respondent. We are unable to accede to this submission. The termination was pursuant to a disciplinary inquiry. It is settled law that in a disciplinary inquiry a conclusion different from that arrived at by a criminal court, may be arrived at. The strict burden of proof required to establish guilt in a criminal Court is not required in disciplinary proceeding. The respondent has not claimed that the disciplinary proceedings were not conducted fairly. As the termination was based on findings of the Disciplinary Committee, the fact that the appellate Court exonerated the respondent was no consequence."

11. Similarly, in Secretary, Ministry of Homes Affairs and Another Vs. Tahir Ali Khan Tyagi, (Supra) the Supreme Court observed (vide paragraph – 6) :-

> "Departmental proceeding and criminal proceeding can run simultaneously and departmental proceeding can also be initiated even after acquittal in a criminal proceeding particularly when the standard of proof in a criminal proceeding is completely different from the standard of proof that is required to

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prove the delinquency of a government servant in a departmental proceeding, the former being one of proof beyond reasonable doubt, whereas the latter being one of preponderance of probability."

12. In view of the above, we are clearly of the opinion that the Labour Court proceeded on a wrong legal basis and wrongly ordered reinstatement of the workman concerned after finding that he was guilty of negligence.

13. In Divisional Controller, KSRTC (NWKRTC) Vs. A.T.Mane, JT 2004 (8) SC 103 the Supreme Court observed that "once a domestic tribunal based on evidence comes to a particular conclusion normally it is not open to the appellate tribunal or courts to substitute their subjective opinion in the place of the one arrived at by the domestic tribunal". The Supreme Court also observed vide paragraphs 13 and 14:

> "Para-13: Coming to the question of quantum of punishment, one should bear in mind the fact that it is not the amount of money mis-appropriated that becomes a primary factor for awarding punishment, on the contrary, it is the loss of confidence which is the primary factor to be taken into consideration. In our opinion, when a person is found guilty of mis-appropriating corporation's fund, there is nothing wrong in the corporation losing confidence or faith in such a person and awarding a punishment of dismissal.
>
> Para-14: This Court in the case of Karnataka State Road Transport Corporation Vs. B.S.Hullikatti, JT 2001 (2) SC 72 held in a similar circumstances that the act was either dishonest or was so grossly negligent that the respondent therein was not fit to be retained as a conductor. It also held that in such cases there is no place for generosity or misplaced sympathy on the part of the judicial forums and thereby interfere with the quantum of punishment."

14. In the present case also it is evident that the Corporation has lost confidence in the respondent due to his gross negligence because of which several passengers died and several others injured. Hence, it is not a fit case for ordering re-instatement.

15. Learned counsel for the respondent submitted that the question about Section 17-B of the Industrial Disputes Act should first be decided before deciding the writ appeal. We do not agree. Section 17-B only pertains to interlocutory orders in a writ petition, but when the petition/appeal is itself being finally disposed off, there is no question of deciding interlocutory

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matters. This submission of the learned counsel for the respondent is, therefore, rejected.

16. In view of the above, we allow these writ appeals and set aside the judgment of the learned single Judge as well as the award of the Labour Court. No costs. Consequently, connected W.A.M.P.Nos.2268 of 2003, 7793 and 7794 are closed.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

ns/sm

To
1. The Managing Director,
The Management of Thiruvalluvar
Transport Corporation,
Pallavan Salai, Chennai - 2.

2. The Presiding Officer,
Labour Court,
Tirunelveli.

+ 2 CCs to Mr.D.Saravanan, Advocate SR NO 7000, 7001

+ 1 CC to Mr.S.Kandaswamy, Advocate SR NO 6716

W.A.Nos.1663 & 1664 of 2003
15.02.2005.

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